

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION

IN THE MATTER OF: CANCELLATION
OF AWARD
NAVAL COMPLEX ROAD IMPROVE-
MENTS-EVERGLADES AVENUE
STATE PROJECT M10-N053-MJ-A
CHARLESTON NAVAL COMPLEX
REDEVELOPMENT AUTHORITY

WRITTEN DETERMINATION

POSTING DATE: March 27, 2003

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from the Charleston Naval Complex Redevelopment Authority (RDA) under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), for a determination of appropriateness regarding RDA's intent to cancel a contract for construction with Colony Construction Company.

BASIS FOR THE REQUEST

The circumstances giving rise to this determination are set forth in the attached letter from RDA to the CPOC. This letter is hereby incorporated into this Determination.

Based on the facts stated above, and under the authority granted by SC Code Regulation 19-445.2085(C), the CPOC hereby cancels, prior to performance and in its entirety, the Notice of Intent to Award to Colony Construction Company. The Charleston Naval Complex Redevelopment Authority may proceed to formally notify Colony Construction Company of the cancellation of this award.

IT IS SO ORDERED



Michael M. Thomas
Chief Procurement Officer for Construction
March 27, 2003

Date

STATEMENT OF THE RIGHT TO APPEAL

By canceling the intent to award prior to performance, this Decision also serves as a written determination under Section 11-35-1520(7) and Regulation 19-445.2085(C). The South Carolina Procurement Code, under Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created The South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine *de novo*:

...

(b) requests for review of other written determinations, decisions, policies, and procedures as arise from or concern the procurement of supplies, services, or construction procured in accordance with the provisions of this code and the ensuing regulations; provided that any matter which could have been brought before the chief procurement officers in a timely and appropriate manner under Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, shall not be the subject of review under this paragraph. Requests for review under this paragraph shall be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of such written determination, decisions, policies, and procedures.

Additional information regarding the administrative review process is available on the internet at the following Web site: <http://www.state.sc.us/mmo/legal/lawmenu.htm>

James C. Bryan
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Jack C. Sprott
Executive Director

Margaret

March 20, 2003

Mr. Michael M. Thomas, P.E., State Engineer
Office of State Engineers
1201 Main Street, Suite 600
Columbia, SC 29201

Subject: **M10-N053-MJ-A: NAVAL COMPLEX ROAD IMPROVEMENTS -
EVERGLADES AVENUE: SE-370**

Dear Mr. Thomas:

By letter dated December 5, 2002 we forwarded a Notice of Intent to Award (SE-370) for the subject contract for your information. Following that, we submitted the Request for Authority to Execute a Construction Contract (SE-380) dated January 9, 2003 which was approved on January 17, 2003 by the State Engineers Office.

This project provided for improvements to a section of Everglades Avenue to include demolition, a 90-foot diameter roundabout, 1300 LF of two-lane roadway, storm drainage and water main replacement.

Subsequent to this request to award, the City of North Charleston (City) initiated earnest negotiations with the RDA for conveyance of property which included that portion of Everglades Avenue that we had scheduled for improvements under this contract. This conveyance was mandated by the State Legislature under the 2001-2002 Budget Provision Codification Act. The City then intends to sell the property to a private developer under an earlier agreement between the City and the developer.

Conveyance to the City by the RDA will remove this property from RDA jurisdiction.

Since the project is funded largely by an EDA grant and since the private developer is not grant eligible, the developer has no interest in taking this project on under his present plans.

Because of the above, we request permission to cancel the Notice of Intent to Award (SE-370) forwarded on December 5, 2002.

Because of the uncertainty of the impending conveyance discussions following bid opening, the Contractor had agreed to extend his bid for 60 days which expires March 24, 2003.

Your guidance in canceling this contract at this time, because of the above, is requested.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Eugene Knisley".

T. Eugene Knisley, P.E.
Operations Director